

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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(www.co.mo.md.us/council/board.html)

Case No. A-5785

PETITION OF PAUL THOMAS
(Hearing held July 24, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, August 27, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The proposed construction of a second-story addition requires a variance of 1.04 feet as it is within 5.96 feet of the side lot line and the existing, non-conforming dwelling requires a variance of .50 feet as is within 6.50 feet of the side lot line. The required side lot line setback is seven (7) feet.

Evan Donaldson, architect, represented the petitioner at the public hearing.

The subject property is Lot 17, Block 3B, Bradley Hills Subdivision, located at 6716 Fairfax Road, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00445043).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner seeks variances from the property's western side yard for the existing dwelling and a second-story addition.
2. Mr. Donaldson testified that the petitioner's lot narrows from front to rear and that as a result the lot narrows from 60 feet along the street front to 42 feet in the rear yard. Mr. Donaldson testified that there is only one other lot in the subdivision with the same dimensions as the petitioner's lot, Lot 19, and that Lot 19 has a slightly wider rear yard.
3. Mr. Donaldson testified that the existing house is a non-conforming structure, the house's southwest corner meets the required setback and the house's northwest corner does not. Mr. Donaldson testified that the variances are required for the only the northwest corner of the dwelling and the proposed addition.

4. Mr. Donaldson testified that the second-story addition would be aligned with the existing house. A letter of support from was entered in the record as Exhibit No.10.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's lot narrows from 60 feet to 42 feet from front to rear and is the smallest lot in the subdivision. The Board finds that these are exceptional conditions and result in practical difficulty for the petitioner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing dwelling and the second-story addition are de minimus.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The existing dwelling and the proposed addition will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no correspondence or testimony in opposition to the variance request. A letter of support was entered in the record as Exhibit No. 10. The proposed construction will not materially change the view of the property and the Board finds that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 1.04 feet from the required seven (7) foot side lot side setback for the construction of a second-story addition and of .50 feet for the existing non-conforming dwelling are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(c) and 6(a) through 6(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 27th day of August, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

